

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

JOHN B. ADRAIN,

Plaintiff,

v.

VIGILANT VIDEO, INC.; and THE CITY
OF PORT ARTHUR, TEXAS,

Defendants.

Case No. 2:10-cv-173

**DEFENDANTS' SUPPLEMENTARY
BRIEF REGARDING DKT. NOS. 202
AND 203 REGARDING USPTO OFFICE
ACTION CONCERNING US PATENT
NO. 5,831,669**

**SUPPLEMENTARY BRIEF REGARDING
DEFENDANTS' MOTION NOS. 202 AND 203**

On June 26, 2013 the USPTO mailed to defendants counsel the following document, attached as Exhibit A to this Supplementary Brief. *Declaration of Roy Thompson*, ¶2. Exhibit A is the most recent Office Action/Communication from the USPTO concerning the second reexamination of the '669 patent. To summarize, Exhibit A sets forth the following information pertinent to the five motions set forth above:

1. The request for reexamination of the '669 patent has been granted (p. 1);
2. Substantial new questions of patentability exist affecting all the claims asserted by plaintiff against defendants (claims 6, 30-32, 35-39 and 41-42 of the '669 patent) are raised (p. 2, pp. 6-16);
3. Claim 6 depends upon claim 51 of the '669 patent (pp. 14-15);
4. There will be no extensions of time allowed in the reexam proceedings and that

the reexam proceeding “will be conducted with special dispatch” pursuant to 35 USC § 305 and 37 CFR 1.550(a) (p. 16);

A. Motion for Reconsideration (Dkt. No. 202)

The Motion for Reconsideration seeks the Court, in part, to reconsider the Court’s holding at p. 4, fn. 1 of the Court’s Memorandum Opinion and Order (Dkt. No. 181) wherein the Court held as follows: “Claim 6 still exists as originally issued, including its dependence from the cancelled claim 1 and the original claim 2. *See* § MPEP 2260.01.” (*Dkt. No. 181, p. 4, fn. 1*) However, the USPTO has stated as follows regarding the dependencies of claim 6 of the ‘669 reexamined patent:

“Claim 6 includes limitations of claim 2, from which claim 6 depends. Claim 6 further includes the limitations of claim 51, from which claim 2 depends. * * * Therefore, Netravali, Hwang, Mehdipour and Boyette in view of Shyu prior art technical teachings appear to be pertinent to allowability reasons of claim 51 and limitations of 2 and 6.” *Exhibit A, pp. 14-15.*

Thus, the USPTO has now stated unequivocally that chain of dependency for claim 6 runs from claim 2 to claim 51, and not claim 1 as originally argued by plaintiff and as held by the Court in this Court’s Memorandum Opinion and Order from May 13, 2013 (Dkt. No. 181).

Defendants respectfully submit this additional information, in the form of Exhibit A, and the above argument, for consideration by the Court during the hearing in this matter, which the Court has set to commence at 9am on July 3, 2013.

B. Emergency Motion (Dkt. No. 203)

The Emergency Motion (Dkt. No. 203) seeks, in part, a continuance from the Court for a new trial date in this matter due to the addition of the new claims, 30-32, 35-39, and 41-42 of the

reexamined '669 patent.¹ Based upon the USPTO's Office Action and conclusions (at pages 6-16 which discuss in detail the prior art references of Netravali, Hwang, Mehdi pour, Boyette, and Shyu "substantial new question[s]" regarding the patentability of claims 6, 30-32, 35-39, and 41-42 exist. *See Exhibit A, p. 16, ¶20*. Because extensions of time will not be permitted in this reexamination proceeding (*Exhibit A, p. 16*), and Adrain is allowed two (2) months from the date of the mailing of the Office Action to respond to the office action (*Exhibit A, p. 1*), then there is strong likelihood that an Order granting a continuance (or staying the case as requested in Dkt. No. 223) for up to six to nine months will allow the USPTO to finalize its determination as to the claims asserted against defendants in this action. Thus, for purposes of judicial economy (as well as for all parties in this matter), resetting the trial date in this matter would provide some certainty to exist as to the validity of any and/or all claims asserted against defendants in this action.

Defendants respectfully submit this additional information, in the form of Exhibit A, and the above argument, for consideration by the Court during the hearing in this matter, which the Court has set to commence at 9am on July 3, 2013.

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¹ It should be noted that Defendants' Motion to Stay (Dkt. No. 223) seeks a stay in this case due to the current reexamination of the '669 patent (and even anticipated the very same Office Action to be filed by the USPTO before August 30, 2013, which is attached as Exhibit A to this Motion). To date, plaintiff has not responded to the Motion to Stay, and the Court has not set a hearing date for said motion.

CONCLUSION

Defendants respectfully submit this Supplementary Brief with Exhibit A as attached to be considered by the Court in relation to the both motions (Dkt. Nos. 202 and 203), which are set for oral argument before the Court on July 3, 2013 at 9am.

DATED: July 1, 2013

THOMPSON & BOGRÁN, P.C.

s/Roy B. Thompson

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CERTIFICATE OF CONFERENCE

I hereby certify that on July 1, 2013, I left a voicemail with J. Ted Polasek regarding this Motion and he objected to the Motion.

s/Roy B. Thompson

Roy B. Thompson, OSB 82501

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANTS' SUPPLEMENTARY BRIEF REGARDING DKT. NOS. 202 AND 203 REGARDING USPTO OFFICE ACTION CONCERNING US PATENT NO. 5,831,669** on the following:

All Counsel Signed up for Electronic Notifications

electronically via the Court's CM/ECF system.

DATED: July 1, 2013

THOMPSON BOGRÁN, P.C.

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